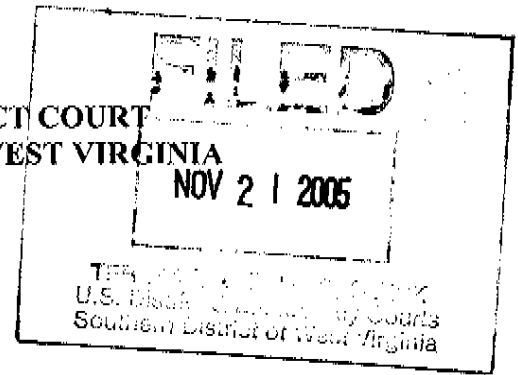


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**



HENRY (NMN) MARTIN, JR.

Plaintiff,

v.

CIVIL ACTION NO.: 1:04-1169

**NORFOLK SOUTHERN RAILWAY COMPANY
AKA//: NORFOLK SOUTHERN CORPORATION,**

Defendant/Third-party Plaintiff,

v.

**SECOND STERLING CORPORATION, BLUESTONE
COAL CORPORATION, and KEYSTONE SERVICE
INDUSTRIES**

Third-party Defendants.

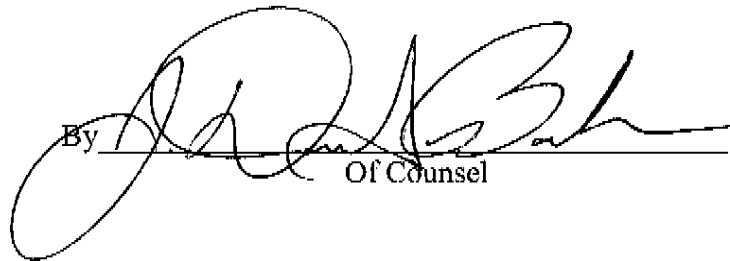
**DEFENDANT/THIRD-PARTY PLAINTIFF NORFOLK SOUTHERN RAILWAY
COMPANY'S MOTION FOR SUMMARY JUDGMENT AS TO THIRD-PARTY
DEFENDANTS**

Comes now Defendant/Third-party Plaintiff, Norfolk Southern Railway Company, hereinafter "NSRC", by and through counsel, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure and moves this Court for summary judgment regarding NSRC's claims of express indemnity under a March 11, 1993 contract. As more fully set forth in the attached Memorandum of Law, NSRC and Third-party Defendant Second Sterling entered into a contract on or about March 11, 1993, wherein Second Sterling Corporation agreed, in part, to indemnify, defend, and hold harmless NSRC for any injury arising out of the loading and unloading of railcars as well as the movement railcars, both activities that the Plaintiff was involved in when he was allegedly injured in this matter. The clear and unambiguous contract language requires the Third-party Defendants to assume the defense of NSRC and hold it harmless as to Plaintiff's

claims of damages. As there is no dispute as to any material fact between the parties summary judgment is appropriate in this action and NSRC is entitled to judgment as a matter of law against the Third-party Defendants.

WHEREFORE, Defendant/Third-party Plaintiff, Norfolk Southern Railway Company respectfully moves this Court, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, to enter an Order granting it summary judgment in this matter and for any other such relief as the Court shall see fit to grant.

NORFOLK SOUTHERN RAILWAY COMPANY,

By  Of Counsel

Fred Adkins, Esquire
J. David Bolen, Esquire
HUDDLESTON BOLEN LLP
611 Third Avenue
P.O. Box 2185
Huntington, WV 25722-2185
Telephone: (304) 529-6181
Facsimile: (304) 522-4312

**Counsel for Defendant/Third-party Plaintiff,
NORFOLK SOUTHERN RAILWAY COMPANY**